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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,497	05/04/2007	Christian Lefevre	007067.00002	4599
22907 7590 12/17/2009 BANNER & WITCOFF, LTD. 1100 13th STREET, N.W. SUITE 1200 WASHINGTON, DC 20005-4051				
EXAMINER				
WIESE, NOAH S				
ART UNIT		PAPER NUMBER		
1793				
MAIL DATE		DELIVERY MODE		
12/17/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/584,497

**Applicant(s)**

LEFEVRE ET AL.

**Examiner**

NOAH S. WIESE

**Art Unit**

1793

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 and 11-17 is/are allowed.
- 6) ☒ Claim(s) 7-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Status of Application***

1. Acknowledgement is made of amendments filed 09/01/2009. Upon entering the amendments, the claims 5, 8-11, and 15 are amended.
2. The claims 1-17 are pending and presented for the examination.

***Objections Withdrawn***

3. Claims 9-17 have been amended to overcome the objections set forth in the previous office action. Therefore, the objections to the claims have been withdrawn.

***Rejections Withdrawn***

4. Claims 5, 8-10, and 15 have been amended to overcome the indefiniteness rejections set forth in the previous office action. Therefore, these grounds of rejections of the claims have been withdrawn.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Oyama et al (EP 1193226).

Regarding **claim 7**, the claim is drawn to an amber glass produced by a certain method. The limitation that the glass is obtained by melting a batch as claimed in claim 1 is a product-by-process limitation. Because amber glasses having equivalent composition and structure to those of claim 7 can be produced by melting batches other than that of claim 1 (such as batches wherein the Sr and Mo components are provided

by oxides rather than sulfides), the product-by-process limitation is not given patentable weight in determining the distinctness of the claim. Since the limitation cannot be given patentable weight, an amber glass having a soda-lime-silica composition would meet the claim 7 limitations. Oyama teaches a yellow to orange (amber) glass based on the soda-lime-silica system (see Abstract). As discussed above, this teaching anticipates the limitations of claim 7.

Regarding **claims 8-9**, Oyama teaches glass compositions that meet all of the compositional limitation of the claims (see Table 1, examples 1 and 2). The sulfur component is given by Oyama as S rather than as  $\text{SO}_3$  as in instant claims. However, this sulfur would actually be present in the glass in the oxidized form  $\text{SO}_3$ , so the difference is in notation rather than composition. Evidence of this fact is the teaching that the sulfur is added as an alkaline sulfide such as  $\text{Na}_2\text{S}$  or  $\text{K}_2\text{S}$  (see paragraph 0020). This is same manner as the sulfur is added in the instant invention (as a sulfide compound) so it necessarily follows that the sulfide compound would oxidize to  $\text{SO}_3$  when the glass was melted, as occurs in the instant invention.

Regarding the limitations that the  $\text{MoO}_3$  and  $\text{SO}_3$  are obtained from molybdenum disulfide and strontium sulfide, these are product-by-process limitations. Because the teachings of Oyama show that glasses with equivalent compositions and equivalent amorphous structures can be obtained by using different starting materials for  $\text{MoO}_3$  and  $\text{SO}_3$ , these product-by-process limitations are not given patentable weight in determining the distinctness of the claims. Thus, Oyama teaches a glass that

anticipates the limitations of claims 8-9 even though its precursor material may be different.

Regarding **claim 10**, the limitation that the batch from which the claimed glass is created contains no free sulfur is a product by process limitation. Both free sulfur and sulfide in the batch are oxidized when the batch is melted to form a glass. Therefore, the glasses resulting from a batch containing sulfur (Oyama) and sulfide (instant claims) would be compositionally equivalent. Therefore, all of the limitations of the glass of instant claim 10 are met by the glasses taught by Oyama, and the claim is not patentably distinct over the prior art.

#### ***Allowable Subject Matter***

7. Claims 1-6 and 11-17 are allowed. The prior art does not teach or render obvious a glass batch based on the soda-lime-silica system that comprises 0.01-1 wt% molybdenum disulfide and 0.01-7 wt% strontium sulfide or a process for manufacturing a tube or blank comprising a step of adding 0.01-1 wt% molybdenum disulfide and 0.01-7 wt% strontium sulfide to the batch composition of the claims.

#### ***Response to Arguments***

8. Applicant's arguments filed 09/01/2009 have been fully considered but are not persuasive.

Applicant argues that the glasses of instant claims 7-10, formed from a batch with equivalent limitations to that of instant claim 1, are patentably distinct from the glasses taught by Oyama et al because they have a different structure and are more

color-stable. Applicant contends that these facts are shown by the better stability and excellence in quality of repeatability in the instantly claimed glasses, asserting that the aim of the invention is to produce color-stable glasses. However, these statements are not evidence of any differences in structure between the inventive and prior art glasses, nor do they show any quantitative differences in properties that could be considered unexpected results. Further, the aim with which the instant inventive process was carried out (i.e. to propose a glass...with a colour which is stable over time...) is not pertinent to the distinctness of the resulting glass over that of the prior art having an equivalent composition. Thus, applicant's arguments do not show any differences in structure or properties in a glass made from the claimed batches when compared to a glass made from the Oyama batches.

The table and explanation of an experiment given in applicant's remarks are similarly not persuasive. It is not entirely clear what information is attempted to be conveyed by the partial table of page 6. Further, the comparative experiments are carried out between two unknown glass compositions. Therefore, it is not possible to use the experiment to give information about the inventive glass batch as compared to the glass batch of the Oyama patent. Applicant's arguments regarding the table and experiment are therefore not persuasive.

For the above reasons, the grounds of prior art rejection for claims 7-10 are maintained.

### ***Conclusion***

9. Claims 1-6 and 11-17 are allowed. Claims 7-10 are rejected.

10. Applicant's arguments are not persuasive, and the previously issued art rejections are maintained. Therefore, **THIS ACTION IS MADE FINAL.**

11. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NOAH S. WIESE whose telephone number is (571)270-3596. The examiner can normally be reached on Monday-Friday, 7:30am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Noah Wiese  
14 December 2009  
AU 1793

/Karl E Group/  
Primary Examiner, Art Unit 1793